

## **REMARKS/ARGUMENTS**

Claims 1-41 are pending in the present application. No claims were canceled or added. Claim 4 is amended to overcome statutory rejections and not in response to any art rejection. Reconsideration of the claims is respectfully requested.

### **I. Examiner Interview**

Applicants appreciate the courtesies extended by Examiner Greimel in the interview that was conducted on December 27, 2007. During the interview, the Examiner agreed that the amendment to claim 4 would overcome the rejection of claim 4 under 35 U.S.C. 112. The Examiner agreed to enter the amendment. The Examiner also indicated she would consider Applicants arguments regarding the rejection of the claims under 35 U.S.C. 102. The arguments discussed as well as additional reasons that the claims are not anticipated are set forth in the remarks below.

### **II. 35 U.S.C. § 112, Second Paragraph**

The Examiner has rejected claim 4 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

The Examiner states:

Claim 4 recites the limitation "the availability list". There is insufficient antecedent basis for this limitation in the claim. The claim has been evaluated as best understood by the Examiner and appropriate correction is required.

Final Office Action dated October 26, 2007, page 2.

Claim 4 has been amended to recite "an availability list." Therefore the rejection of claim 4 under 35 U.S.C. § 112, second paragraph has been overcome.

### **III. 35 U.S.C. § 102, Anticipation**

The Examiner has rejected claims 1-41 under 35 U.S.C. § 102(b) as being anticipated by *Dalzell* et al., Metadata Service that Supports User-to-User Sales Via Third Party Web Pages, U.S. Patent Application Publication No. 2003/0204447, published October 30, 2003 (hereinafter referred to as "*Dalzell*"). This rejection is respectfully traversed.

Regarding claim 1, the Examiner states:

**In reference to claims 1, 25 and 32, discloses a method, system and apparatus for a bartering system including:**

- a. receiving a needs list having at least one needed item a user desires to acquire; receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item and wherein the priority indication indicates items that are equivalent to the at least one needed item;
- b. constructing the needs list with the priority indication into a barter protocol language; and
- c. searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found (0009-0010; 0013-0017; 0025-0026[.]

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A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case each and every feature of the presently claimed invention is not identically shown in the cited reference, arranged as they are in the claims.

Independent claim 1 recites:

1. A method for carrying out a bartering system over a network, comprising:
  - receiving a needs list having at least one needed item a user desires to acquire;
  - receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item, and wherein the priority indication indicates items that are equivalent to the at least one needed item;
  - constructing the needs list with the priority indication into a barter protocol language; and
  - searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found.

Independent claims 25 and 32 recite similar subject matter. In this case, *Dalzell* fails to teach the feature of a barter protocol language and a priority indication. *Dalzell* also fails to teach the steps of receiving a priority indication for the at least one needed item; constructing the needs list with the priority indication into a barter protocol language; and searching available items for a match with each of the at least one needed item based upon the priority indication.

**III.A. Receiving a priority indication for the at least one needed item.**

*Dalzell* fails to disclose “receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item, and wherein the priority indication indicates items that are equivalent to the at least one needed item”, as is recited in claim 1. In rejecting claim 1, the Examiner cites to *Dalzell* at paragraphs 0009-0010, which state:

[0009] The present invention comprises various inventive features for facilitating user-to-user and other sales in an online marketplace, including features for assisting users in efficiently creating and locating marketplace listings. These features may be embodied individually or in an appropriate combination within a particular system.

[0010] In a preferred embodiment, the online marketplace system includes a database of information about products that may be listed by users within an online marketplace. This information typically includes product IDs, and descriptions and product images provided by manufacturers or distributors of the products. The product information in this database is viewable by end users through a browsable electronic catalog in which each product is preferably fully identified within a corresponding product detail page. Each product detail page typically includes a product image and description, and may include customer ratings, customer and professional reviews, sales rank data, lists of related products, and/or other types of supplemental data that may assist consumers in making informed purchase decisions. This supplemental data may be maintained or generated by the operator of the marketplace system as a service to its customers. Users of the system can preferably locate specific product detail pages within the catalog by executing search queries, navigating a browse tree, or using any other navigation method supported by the particular system.

Here, *Dalzell* discloses features for assisting users in creating and locating online marketplace listings. The online marketplace system includes a database of products that may be listed by users. *Dalzell* further states:

[0011] To add a listing for selling a particular product within the marketplace, a seller may browse to the detail page for that product and then select a link for adding a listing. Because the seller fully identifies the product to be listed by browsing to the corresponding detail page, the listing may be accurately associated with a particular product ID (UPC, ISBN, etc.) without the need for the seller to supply the product ID.

*Dalzell* paragraph [0011].

The information in the database of products describes particular products. The product information may include information such as product manufacturer identification numbers, descriptions of the product, and images of the products. When a user wants to sell a product on the online marketplace, the user can search for the detail page describing the product and add a listing for the product. This enables the user to sell a product without having to create descriptions or search for product identification numbers. The product information describes or identifies the particular product. The product information does not indicate

a level of desire the user has in acquiring the item or items that are equivalent. Therefore, this section of *Dalzell* does not teach a priority indication.

The Examiner also cites to *Dalzell* at paragraphs 0013-0014 which is as follows:

[0013] To assist potential buyers in efficiently locating the marketplace listings for a particular product, each product detail page preferably displays or summarizes the existing marketplace listings for the corresponding product. These listings may be associated with a variety of different sellers (including individuals and small merchants), and may be for both new and used units of the product. Thus, by accessing the detail page for a particular product, a buyer can efficiently and accurately locate all of the current marketplace listings (if any) for that product, as well as view detailed product information from the product database (typically including product images, third party product reviews, etc). The user can also preferably compare the prices, product conditions, and other parameters of the various listings, and can initiate purchasing of the product from a particular seller.

[0014] Because each marketplace listing is displayed in conjunction with the corresponding product's description within the database/catalog, there is a significantly reduced need for buyers to rely on the accuracy and completeness of product information supplied by the seller. Thus, the risk of buyers misidentifying the listed products (e.g., buying product A with the belief that it is product B), or of being unable to determine the identity or characteristics of a listed product, is significantly reduced.

This portion of *Dalzell* describes pre-generated detailed product information for particular products. A buyer can locate all listings for a particular product and the detailed product information by accessing a detail page for the particular product. The detail page displays listings for the particular product. The product description information in the listings reduces the risk that the buyer will misidentify listed products or be unable to identify a listed product. In other words, *Dalzell* appears to provide pre-generated product descriptions to be used by sellers posting a particular product for sale. *Dalzell* seems to attempt to provide these product descriptions because they may be more accurate than a product description created from scratch by each individual seller. However, as discussed above, these product descriptions do not teach a priority indication that indicates a level of desire a user has in acquiring a particular item.

The Examiner additionally cites to *Dalzell* at paragraph 0015-0017 which states:

[0015] In one embodiment, some or all of the detail pages may also provide an option to purchase the product from a preferred retailer or "provider seller," which may be the operator of the marketplace system or a business partner of the operator. The system may thus serve as both an online store and an online marketplace, with the marketplace sellers being permitted to list their items for sale on the product detail pages or other catalog "real estate" of the store. This feature provides a cross-selling benefit by effectively driving retail customers to non-retail listings and vice versa. Further, because catalogs used by online stores tend to have detailed and accurate product descriptions of consistent format, the task of evaluating marketplace listings is made easier for buyers.

[0016] A detail page may also be configured to display any existing marketplace listings for products that are similar or related to the product featured in the product detail page. For instance, a detail page for a particular laptop computer may, in addition to displaying any existing marketplace listings for the laptop computer itself, display any listings that exist for (a) accessories for the laptop computer, and/or (b) similar laptop computers. A table of similar or related products may be used to implement this feature.

[0017] When a particular product is currently unavailable within the online marketplace, the

product's detail page may provide an option for buyers to pre-order the corresponding product from an unspecified marketplace seller. These preorder requests may be displayed within the corresponding product detail pages to entice possessors of such products to list the same within the marketplace. In one embodiment, the creator of a preorder listing is prompted to specify a minimum product condition desired and a maximum price to be paid. These parameters are preferably used by the system to automatically match preorder listings with suitable marketplace listings.

Here, *Dalzell* states that the detail page displaying listings for a particular product may be configured to display listings for related products. The detail page may also allow buyers to pre-order a product that is currently unavailable. Again, neither the detail page nor the listings displayed on the detail page provide an indication of a level of desire the user has in acquiring a particular product. Thus, *Dalzell* fails to teach "receiving a priority indication for the at least one needed item, wherein the priority indication indicates a level of desire the user has in acquiring the at least one needed item, and wherein the priority indication indicates items that are equivalent to the at least one needed item" as is claimed in claim 1.

### **III.B. Constructing the needs list with the priority indication into a barter protocol language**

*Dalzell* fails to disclose "constructing the needs list with the priority indication into a barter protocol language" as in claim 1. *Dalzell* at paragraphs 0025-0026 states as follows:

[0025] Further, some or all of the features may be embodied within a metadata service in which a metadata server provides web page metadata to a metadata client for display to users. In such an embodiment, the entire World Wide Web, or a selected subset of the World Wide Web, may be used as the products catalog. For instance, when a user views a web page that, based on an analysis of web page content performed by the metadata service, displays a description of a first product, the service may present to the user an option to sell a unit of the first product. If the user selects this option and creates a product or preorder listing, the service may thereafter display this product or preorder listing to other service users when such users access the same web page or any other web page that includes a description of the first product.

[0026] A system that implements the foregoing and other features will now be described with reference to the drawings. The drawings and the associated descriptions are provided to illustrate specific embodiments and features of the invention and not to limit the scope of the invention. Throughout the drawings, reference numbers are re-used to indicate correspondence between referenced elements. In addition, the first digit of each reference number indicates the figure in which the element first appears.

Here, *Dalzell* discloses that the World Wide Web, or a subset of it, may be used as a products catalog. This portion of *Dalzell* again fails to disclose a priority indicator that indicates a level of desire the user has in acquiring the item. *Dalzell* fails to teach or even mention a barter protocol language, or any other type of language in this or any other section of the reference. Moreover, *Dalzell* does not teach bartering. Instead, *Dalzell* only discloses a system that permits a user to specify a maximum price to be paid by the buyer for a particular item. See *Dalzell* at paragraph 0017, shown above. *Dalzell* does not teach

bartering for particular items in any section of the reference. *Dalzell* is unconcerned with bartering. Therefore, *Dalzell* cannot be construed as teaching a **barter** protocol language or constructing a barter protocol language. Thus, *Dalzell* fails to disclose “constructing the needs list with the priority indication into a barter protocol language”, as in claim 1.

### **III.C. Searching available items for a match with each of the at least one needed item based upon the priority indication**

*Dalzell* fails to teach “searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found”, as in claim 1. In rejecting claim 1, the Examiner cites to *Dalzell* at paragraphs 0093-0094 which states as follows:

[0093] B. Creation and Display of Preorder Listings

[0094] FIG. 3A illustrates the general form of a “preordering” page 300 that may be displayed in response to a buyer requesting to pre-order an item on a product’s detail page, such as by the use of the preorder button 215 shown in FIG. 2 (although FIG. 3A corresponds to a different product than that of FIG. 2). As illustrated, the user is prompted with (1) a pulldown menu 305 to specify a minimum acceptable condition of the product (which may be “any,” “acceptable,” “good,” “very good,” or “like new” in one embodiment), (2) a box 310 in which enter a maximum price at which the user is willing to buy the product, and (3) a pulldown menu 315 specifying the length of time the pre-order is to remain active (e.g., one week, four weeks, eight weeks, until purchased). As described below, this data is preferably used by the marketplace system to automatically match pre-order listings with marketplace listings. To assist the user in selecting a suitable maximum price, the system displays the item’s list price, the price at which the item is available from the provider seller, and a suggested maximum price. Other price data, such as the average selling price of the item within the marketplace (not shown), may also be displayed. The suggested price may be based on one or more of the criteria set forth above determining suggested marketplace listing prices.

In this section of *Dalzell*, a buyer can preorder an item. The user may specify a minimum acceptable condition of the product, a maximum price to buy the product, and the length of time the pre-order will remain active. This section does not teach a priority indication that indicates a level of desire the user has in acquiring the at least one needed item and indicates items that are equivalent to the at least one needed item. Thus, this portion of *Dalzell* cannot teach matching based on the priority indication. Moreover, specifying a minimum acceptable condition and/or a maximum price is not equivalent to searching available items for a match with the at least one needed item based on the priority indication.

Finally, even if, for the sake of argument, the specified minimum acceptable condition, maximum price, and length of time could be construed to teach a priority indication, *Dalzell* fails to teach an item having a lower priority is matched as being equivalent to the at least one needed item only if an item

having a higher priority is not found. In fact, *Dalzell* only specifies a minimum condition or maximum price. *Dalzell* does not specify higher priority and lower priority indications as in claim 1.

Finally, the Examiner cites to *Dalzell* at paragraphs 0158-0160 which states as follows:

[0158] C. Preordering Process

[0159] FIG. 8 further illustrates a preorder process 800 by which a user may preorder a product, as depicted in FIGS. 2 and 3A. As described above, the user preferably initiates this process from the product's detail page (block 805). In some embodiments, users may also or alternatively be permitted to initiate preordering from other types of catalog pages, including browse node pages and other pages that feature multiple products.

[0160] The user first specifies the minimum condition of the product (block 810). As depicted in block 815, the system may use the condition descriptor selected by the buyer to suggest a price. The price may alternatively be suggested without regard to the condition specified by the buyer, as in FIG. 3A. The user then enters the price (taking into account or ignoring the suggested price) (block 820), the maximum duration the listing is to remain active (block 825), and payment and shipping information for purchasing the product (block 830). The user may also be prompted to sign in or register (not shown).

Here, *Dalzell* describes a preorder process to preorder a product. The user specifies a minimum condition of the product, enter a price, maximum duration the listing will remain active, and payment information. Again, specifying a minimum condition, price, and duration of listing does not teach a priority indicator that indicates a level of desire the user has in acquiring the item or items that are equivalent to the needed item. Thus, *Dalzell* cannot teach matching based upon the priority indication. Moreover, *Dalzell* does not mention lower priority and higher priority items in this or any other section of the reference. Thus, *Dalzell* fails to disclose "searching available items for a match with each of the at least one needed item based upon the priority indication wherein an item having a lower priority indication is matched as being equivalent to the at least one needed item only if an item having a higher priority is not found", as in claim 1. Thus, claim 1 is not anticipated by *Dalzell*.

#### **III.D. Independent claims 25 and 32**

Claims 25 and 32 recite subject matter discussed above with regard to claim 1.

Therefore, independent claims 25 and 32 are distinguishable over *Dalzell* for at least the reasons set forth above with regard to claim 1. In addition, claim 25 recites additional features not taught by *Dalzell*. Claim 25 recites:

A barter protocol language comprising:

means for specifying a needs list having at least one needed item a user desires to acquire of needed items for each one of a plurality of users;

means for specifying an availability list of available items for each one of the plurality of users;

means for specifying a priority indication for at least one of i) each needed item, and ii) each group of at least one item, indicating a corresponding user's priority for acquiring the needed item; and

means for specifying a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein each near equivalent item has an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item cannot be found.

*Dalzell* does not teach “means for specifying a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein each near equivalent item has an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item cannot be found” as recited in claim 25. In rejecting dependent claims 2 and 33, which recites a similar feature, the Examiner cites to *Dalzell* at paragraph 0158-0160, which is shown above. As discussed above, this section of *Dalzell* discusses a preorder process that involves specifying a minimum condition of the product, a price, and a maximum duration for the listing to remain active. *Dalzell* teaches providing this information for a particular product. If the particular product is not available, the user may preorder the particular product. *Dalzell* at paragraph 0017, shown above. In other words, if a particular product is unavailable, *Dalzell* permits the user can preorder the product. *Dalzell* does not specify a range of near equivalency associated with a plurality of **dissimilar items** to form near equivalent items. In addition, as discussed above, *Dalzell* does not teach a priority indication that indicates whether a dissimilar item that is a near equivalent item will be satisfactory to the user in lieu of the at least one needed item.

Although *Dalzell* does mention displaying listings for products that are **similar** or related to the product featured in a product detail page at paragraph 0016, which is shown above, *Dalzell* does not provide listings for **dissimilar items**. Moreover, *Dalzell* does not specify a **range of equivalency** associated with either similar items or dissimilar items. Thus, *Dalzell* fails to teach a barter protocol language that specifies “a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein each near equivalent item has an associated priority indication indicating a user's desire to accept a given near equivalent item in lieu of a given needed item if a match for the given needed item cannot be found” as recited in claim 25.

### **III.E. Dependent Claims 2-24, 26-31, and 33-41**

Dependent claims 2-24, 26-31, and 33-41 depend from claims 1, 25, and 32. Therefore, at least by virtue of their dependency, claims 2-24, 26-31, and 33-41 are also not anticipated by *Dalzell*. Moreover, claims 2-24, 26-31, and 33-41 recite additional combinations of features not taught by *Dalzell*. For example, claims 2 and 33 recite that the barter protocol language “specifies a range of near equivalency associated with a plurality of dissimilar items to form near equivalent items, wherein the near equivalent items are items that are dissimilar to the at least one needed item, and wherein the priority indication indicates whether a near equivalent item will be satisfactory to the user in lieu of the at least one needed item.” *Dalzell* fails to teach this feature for the reasons set forth above with regard to claim 25 in section III.D.

Regarding claims 3 and 34, *Dalzell* fails to teach “wherein searching available items is performed first within a first bartering system and performed second across a different bartering system if no match is found during the search within the first bartering system.” The Examiner cites to paragraph 0175 which states:

[0175] The marketplace web site system may also include components for interfacing with other web sites and systems, such that users of such systems may perform the various functions described herein. For instance, the marketplace web site system may be integrated with an online services network such that users of the online services network can view the product catalog, create marketplace and preorder listings, and make marketplace purchases, using a proprietary client application.

Here, *Dalzell* describes interfacing the marketplace web site system with other web sites and systems. In this manner, a user of an online services network can make marketplace purchases on the marketplace web site system using a proprietary client application. Although *Dalzell* discloses interfacing two systems, *Dalzell* does not describe two languages or two barter protocol languages. As discussed above, *Dalzell* does not teach a single barter protocol language constructed based on a priority indication, nor does *Dalzell* disclose a second barter protocol language. Thus, *Dalzell* fails to teach the features in claims 3 and 34.

Regarding claims 4 and 35, *Dalzell* fails to teach “the first bartering system associated with a first barter protocol language and wherein the different bartering system associated with a second barter protocol language and further comprising: translating, before the searching is performed across the different bartering system, the needs list from the first barter protocol language to a common barter protocol language, wherein the common barter protocol language comprises a representation of the needs list and an availability list that is common to both the first bartering system and the different bartering system.” The Examiner cites to *Dalzell* at paragraphs 0178-0180 which states as follows:

[0178] In this embodiment, users of the metadata service download and run a metadata client component 1100, which is preferably a browser plug-in. As a user browses the World Wide Web, the metadata client 1100 running on the user's machine 505 communicates with a metadata server 1102 to retrieve information or "metadata" associated with the page and/or site being viewed. As is known in the art, this metadata may be displayed to the user in a separate window, pane, bar, or other area of the web browser 530, or may be inserted onto the web page being viewed.

[0179] The metadata client 1100 and server 1102 also include functionality for detecting that a page being viewed displays a description of a product, and for identifying that product. This may optionally be accomplished using a real time web page content analyzer 1104 that analyzes the content of a web page (to search for known product codes and descriptions) when the page is viewed by a user. The task of identifying product descriptions within web pages may additionally or alternatively be performed "off-line" using a web crawler program, in which case a table that maps URLs to products may be maintained by the system. Examples of metadata client and server architectures that provide these and other features are described in U.S. patent application Ser. Nos. 09/794,952, filed Feb. 27, 2001, and 09/820,207, filed Mar. 28, 2001, the disclosures of which are hereby incorporated by reference. Regardless of the particular product-identifying method used, the metadata client 1100 preferably reports to the metadata server 1102 information, such as the URL, about the web page currently being viewed on the computer on which the metadata client 1100 is installed.

[0180] To provide the above-described marketplace features using the World Wide Web (or a portion of the World Wide Web) as the products catalog, the metadata service preferably operates generally as follows. When a user of the service views a page that describes a product recognized by the metadata server 1102, the metadata server performs some or all of the following steps: (1) instruct the metadata client 1100 to display an option to sell a unit of the product; (2) search its own product listing database 562 to determine whether any marketplace listings exist for the product (and possibly related products); (3) if any pending marketplace or preorder listings are found in the product listings database in step (2), instruct the metadata client 1100 to display these listings in either a full or a summarized form; and (4) if no marketplace listings currently exist for the product, instruct the metadata client 1100 to display an option to preorder a unit of the product from an unspecified marketplace seller.

In this section, *Dalzell* describes using the World Wide Web as the products catalog. When a user of a metadata client views a page that describes a product recognized by the metadata server, the server instructs the client to display an option to sell a unit of the product, search its own product listing database to determine if a marketplace listing exists for the product, instruct the client to display any listings found, and if no listings are found, instruct the client to display an option to preorder the product. Here, *Dalzell* is describing using the World Wide Web as a products catalog. *Dalzell* is not describing a first bartering system and a different bartering system. As discussed above, *Dalzell* is not concerned with bartering. Moreover, assuming, for the sake of argument, that *Dalzell* is describing a first and second

bartering system, *Dalzell* still does not teach priority indicators, constructing a barter protocol language from a priority indication, or a second barter protocol language.

In addition, *Dalzell* does not teach or even mention translating a needs list from a first barter protocol language to a second barter protocol language before searching is performed across the different bartering system. Instead, *Dalzell* merely states that a real time web page content analyzer analyzes the content of a web page to search for known product codes and descriptions when a page is viewed. *Dalzell* also mentions using a web crawler program to identify product descriptions within web pages. When the product is identified, the server instructs the client to display an option to sell a unit of the product and the server searches a product listing database for product listings for the product. *Dalzell* does not teach or even mention translating a barter protocol language into a common barter protocol language that comprises a representation of a needs list and the availability list that is common to both the first bartering system and the different bartering system. In other words, *Dalzell* does not create a representation of a needs list and an availability list that is common to two different bartering systems. Instead, *Dalzell* simply identifies a product viewed on a web page and searches its own product listing database for a listing of the product in the marketplace system. A translation of a first barter protocol language to a common barter protocol language does not take place in this or any other section of the reference. Therefore, *Dalzell* fails to teach the features of claims 4 and 35.

Consequently, it is respectfully urged that the rejection of claims 1-41 under 35 U.S.C. § 102(b) has been overcome.

Furthermore, *Dalzell* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. *Dalzell* actually teaches away from the presently claimed invention because it teaches a marketing system for specifying a minimum condition and a maximum price of a particular item as opposed to a barter protocol language for specifying a priority indication that indicates a user's desire to acquire the item, and specifying a range of equivalency in items that are dissimilar to the desired item as in the presently claimed invention. Absent the examiner pointing out some teaching or incentive to implement a barter protocol language with the marketplace system of *Dalzell*, one of ordinary skill in the art would not be led to modify *Dalzell* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Dalzell* in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

**IV. Conclusion**

It is respectfully urged that the subject application is patentable over *Dalzell* and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: January 4, 2008

Respectfully submitted,

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